

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

PENDING BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

PHYSICIANS FORMULA)	
COSMETICS, INC.,)	
)	
Petitioner,)	3:06MC51
)	
v.)	Cancellation No. 92040782
)	
COSMED, INC.,)	
)	
Registrant.)	

ORDER

THIS MATTER IS BEFORE THE COURT on the “Motion of Non-Party to Quash Subpoena” filed on April 28, 2006, by Dr. Rashid Buttar/V-SAB Medical Laboratories, Inc. (Document No. 1). Also before the Court is Cosmed, Inc.’s “Motion to Compel the Production of Documents and Appearance at Deposition” (Document 2), and “Opposition to V-SAB Medical Laboratories, Inc.’s Motion...and Memorandum in Support of Cosmed, Inc.’s Motion to Compel...” (Document 3) filed May 3, 2006.

On April 25, 2006, Cosmed, Inc., issued a subpoena to Dr. Rashid Buttar of V-SAB Medical Laboratories, Inc., (a non-party to the pending trademark action) commanding his deposition on May 1, 2006, and requesting the production of documents thought to be relevant in the cancellation proceeding with Physicians Formula Cosmetics, Inc. In his motion to quash, Dr. Buttar requested that the Court quash the subpoena because (1) he needed additional time to retain counsel familiar with patent and trademark issues to represent him at the deposition; (2) the subpoena did not allow

reasonable time for compliance; and (3) the subpoena imposes an undue burden on him as a non-party. The certificate of service on Dr. Buttar's motion indicates that only Cosmed, Inc., was served with the motion.

Cosmed, Inc., in its motion to compel, asks the Court for an expedited ruling on Dr. Buttar's motion to quash and Cosmed, Inc.'s motion to compel before May 10, 2006, because Cosmed, Inc.'s testimony period in the cancellation proceeding ends on that date.

Under the circumstances, the Court is not inclined to enter an expedited order because (1) it appears from the pleadings that Dr. Buttar has not served Physicians Formula Cosmetics, Inc., with his motion to quash; (2) pursuant to Local Rule 7.1(B), Dr. Buttar and Physicians Formula Cosmetics, Inc., have until May 20, 2006, to file their responses in opposition to Cosmed, Inc.'s motion to compel; and (3) Dr. Buttar is a non-party who desires to retain counsel more familiar with trademark to protect his interests in the pending action.

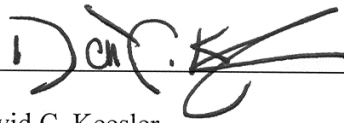
Accordingly, the Court declines to issue an expedited ruling but will establish a deadline for the appearance of Dr. Buttar's and V-SAB Medical Laboratories, Inc.'s new counsel, and require Dr. Buttar to serve his motion on Physicians Formula Cosmetics, Inc. Upon the conclusion of the events outlined below, the Court will decide the merits of the motions as briefed by the parties.

IT IS THEREFORE ORDERED that Dr. Rashid Buttar's and V-SAB Medical Laboratories, Inc.'s new counsel must appear on or before **May 20, 2006**, and file on the same date (1) a memorandum in support of Dr. Buttar's motion to quash, and (2) a response in opposition to Cosmed, Inc.'s motion to compel.

IT IS FURTHER ORDERED that Dr. Buttar shall serve counsel for Physicians Formula Cosmetics, Inc., with a copy of this Order and his motion to quash no later than **May 12, 2006**, and any subsequent filings related thereto. Dr. Buttar shall file a certificate of service with this Court

confirming same.

Signed: May 9, 2006



David C. Keesler
United States Magistrate Judge

